

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JIMMIE LEWIS,)
)
Plaintiff,) C.A. No.: 04-1350 (GMS)
)
v.)
)
SYLVIA FOSTER, LANCE SAPERS,)
DAVE MOFFITT, R. GRAY,)
MR. JOHNSON, JOHN JOE,)
)
Defendants.)

**DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S
MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT
DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS
PURSUANT TO RULE 37**

COME NOW, Defendant, Dr. Sylvia Foster, by and through her undersigned counsel and responds to Plaintiff's Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37, and in support thereof, avers the following:

1. Plaintiff, Jimmie Lewis, filed the present Motion on January 4, 2007 contending Defendant, Dr. Sylvia Foster, has failed to adhere to the various discovery requests which have previously been filed and attempted to depose the Plaintiff on December 18, 2006. Additionally, he contends co-defendants' counsel, Deputy Attorney General Gregory Smith, was "indifferent toward the plaintiff's plight, as well as a total disregard towards the Honorable Courts procedures and/or orders."

2. The Order signed by the Honorable Judge Sleet of September 27, 2006 specifically reads, "Defendants shall respond to interrogatories and request for admission *properly filed* by Plaintiff within the discovery period . . ." [emphasis added] Defendant, Dr. Sylvia Foster's position continues to be the previous requests referenced in Plaintiff's most

recent Motion for Order Compelling Discovery and the present Motion were not "properly filled". Therefore, Defendant contends a response to such requests is not warranted pursuant to the Court's Order of September 27, 2006.

3. Additionally, Defendant, Dr. Sylvia Foster, and her representative counsel is permitted to attend a legitimately noticed deposition of a witness in a case in which Dr. Sylvia Foster is a party. Pursuant to Local Rule 30.3 of the United State District Court, District of Delaware Local Rules; the following individuals are permitted to attend depositions in a case: (1) the deponent, (2) counsel for any party and members and employees of their firms, (3) a party who is a natural person, (4) an officer or employee of a party which is not a natural person designated as its representative by its counsel, (5) counsel for the deponent, and (6) any consultant or expert designated by counsel for any party. Therefore, the attendance at Plaintiff's deposition by Ronald W. Hartnett, Jr., Esquire, a member of the firm of Reger Rizzo Kavulich & Darnall was permitted pursuant to the Local Court Rules.

4. Defendant, Dr. Sylvia Foster, filed a Motion for Protective Order on October 27, 2006 in response to the repeated requests by Plaintiff for discovery materials. The arguments presented in said Motion for Protective Order are herein incorporated in this response in opposition to the Plaintiff's present Motion.

5. At this time, the Court has not ruled on the outstanding Motion for Protective Order. Until a ruling is made on said Motion, Defendant, Dr. Sylvia Foster's position is to refrain from responding to the inordinate amount of discovery requests which have been submitted by Plaintiff in this case. In the event the Court rules responses are necessary from Defendant, Dr. Sylvia Foster, then efforts will be undertaken to abide by the ruling of the Court.

6. Contentions of any wrongdoing by Deputy Attorney General Smith are directed to

his attention and not under the responsibility of Defendant, Dr. Sylvia Foster. Therefore, no comment is warranted in regards to Paragraph #3 of Plaintiff's Motion; with the exception to request that Plaintiff's request for sanctions be denied.

Therefore, in light of the arguments submitted above and responses thereto, Defendant, Dr. Sylvia Foster, respectfully requests this Honorable Court to deny the Plaintiff's Motion for Order of Declaration for the Defendant Dr. Sylvia Foster's Contempt of Court Orders Pursuant to Rule 37.

RESPECTFULLY SUBMITTED,
REGER RIZZO KAVULICH & DARNALL LLP

/s/ Louis J. Rizzo, Jr.
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DATED: 1-23-2007

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Defendants.)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify on this 23rd day of January, 2007 that a true and correct copy of **DEFENDANT DR. SYLVIA FOSTER'S RESPONSE TO PLAINTIFF'S MOTION FOR ORDER OF DECLARATION FOR THE DEFENDANT DR. SYLVIA FOSTER'S CONTEMPT OF COURT ORDERS PURSUANT TO RULE 37** has been served electronically and/or by first class mail, postage prepaid, to the following:

Jimmie Lewis
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/s/ Louis J. Rizzo, Jr.

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Dated: 1-23-2007